THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.23504 OF 2005

Between:

K.Appala Raju ….. Petitioner

And

1. Engineer in Chief's Branch,

Kashmir House, Army Head Quarters,

DHQ PO, New Delhi

And two others ….. Respondents

Counsel for the Petitioner : Sri L.Nanda Kishore

Counsel for the respondents : Sri I.Koti Reddy

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.23504 OF 2005

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

The present writ petition is filed, aggrieved by the order of the Central Administrative Tribunal, in O.A.No.707 of 2005 dated 19.10.2005 rejecting the petitioner's challenge to his orders of transfer.

Facts to the extent necessary for this writ petition are that the petitioner joined the Engineer-in-Chief Branch (1st respondent organization) on 13.10.1982. While working in the office of the Chief Engineer (Navy) at Visakhapatnam, the petitioner was transferred, by order dated 16.4.2005, from Visakahaptnam to Ezhimala, in the State of Kerala. The petitioner submitted a representation to the Chief Engineer that since he had been elected as the organizing secretary for MES Employees Union during January, 2005 and as para 17(b) of the policy of posting, conferred protection on important office bearers of recognized unions/association who were elected as members for the first time, from being transferred, the order of transfer should not be given effect to. The said representation was rejected by the 2nd respondent in proceedings dated 9.6.2005. Another representation submitted by the petitioner on 13.7.2005 was also rejected by the 2nd respondent vide proceedings dated

8.8.2005. The petitioner challenged the order of transfer in O.A.707 of 2005 and the Central Administrative Tribunal passed interim orders on 24.8.2005 that the petitioner shall not be relieved till final orders were passed. The interim order dated 24.8.2005 was extended from time to time, and ultimately, O.A.No.707 of 2005 came to be dismissed on 19.10.2005.

Petitioner would contend, before this Court, that while the 2nd respondent had earlier rejected his request on the ground that the post of 'organizing secretary' was not covered under the nomenclature of important office bearers and that the petitioner was not entitled for protection from transfer, he had subsequently questioned the very nomination of petitioner being elected as organizing secretary. It is the petitioner's case that the 2nd respondent, in accordance with the policy guidelines issued in circular dated 17.9.2004, ought to have borne in mind that important office bearers of recognized unions or associations were exempted from transfer, if they were elected for the first time. Petitioner would also refer to the proceedings dated 18.11.1991 wherein it is specifically stated that important office bearers of recognized unions were protected from transfers. Petitioner would contend that the Bhartiya Pratirakshna Mazdoor Sangh, an All Indian Federation of Defence Workers, recognized by Ministry of Defence, had written to the 2nd respondent that the petitioner was elected as an organizing secretary of the MES Employees Union and that the orders of transfer be cancelled. Petitioner would submit that the Addl. chief engineer (works) had written to the 2nd respondent on 20.6.2005 informing that the petitioner was elected for the first time as organizing secretary of the MES Employees Union and as such was entitled to have the orders of transfer cancelled in accordance with the terms of the existing policy guidelines. Petitioner would contend that the orders of transfer passed in the middle of the academic year adversely affected the academic curriculum of his children.

The Tribunal in its order dated 19.10.2005 considered the warning instructions for tenure postings in proceedings dated 17.9.2004, and held that protection from posting was given to the personnel who were elected for the first time either as works committee member or as one of the office bearers of the recognized unions/associations and that the instructions also provided that it would be ensured that the names of personnel, who were due for tenure posting during 2005, were not nominated/elected for the above posts and if any person due for tenure posting was

elected as works committee/important office bearer as a defaulter, no protection should be granted to such persons. The Tribunal, taking note of the fact that the petitioner was elected as works committee member during the year 1999 to 2001, held that his election subsequently as organizing secretary could not be considered as a first time election and the petitioner was therefore not entitled for protection. The Tribunal rejected the contention, that the petitioner did not make any claim when he was elected as works committee member and that he was claiming protection for the first time after his election as organizing secretary, holding that the warning instructions conferred protection only on the personnel who were elected for the first time and that such protection was not available to persons who were elected for the second time to any post of either works committee member or office bearer of the recognized union. The Tribunal, relying on the judgment of the Supreme Court in **State of U.P. v. Gobardhan Lal,** held that the warning instructions were mere guidelines and that orders of transfer, made even in transgression of administrative guide lines, could not be interfered with nor did they confer any legally enforceable right unless it was shown to be vitiated by mala fides or made in violation of any statutory provision.

Before us, Sri L.Nanda Kishore, learned counsel for the petitioner would lay emphasis on the Vitarelli doctrine to contend that an executive agency must be rigorously held to the standards by which it professes its action to be judged. The rule enunciated in "Vitarelli" has been considered by the Supreme Court in **B.S.Minhas v. Indian Statistical Institute**:-

"The next question that arises for consideration is whether the appointment of Respondent 4 as Director of Respondent 1 is illegal because of non-compliance with bye-law 2. Bye-law 2 does require that before appointment, the vacancy in the post of Director should be suitably publicised. In the instant case, it is admitted on both sides that no publicity whatsoever was given in respect of the vacancy. The contention of Shri Garg, however, is that the bye-law having no force of statute, non-compliance with its requirement cannot in any way affect the appointment of Respondent 4 as Director of Respondent 1. Shri Tarkunde, however, contended that assuming that the bye-law is not statutory, even so Respondent 1 was bound to comply with it. In support of his contention he strongly relied upon *Ramana Dayaram Shetty* v. *International Airport Authority of India (1979) 3 SCR 1014).* The Court in that case held (at p.1635 of AIR)

"It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in *Vitarelli* v. *Seaton(1959) 359 US 535 : 3 L Ed 2d*

1012) where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.'"

The aforesaid principle laid down by Mr Justice Frankfurter in *Vitarelli* v. *Seaton*3 has been accepted as applicable in India by this Court in *Amarjit Singh Ahluwalia* v. *State of Punjab (1975) 3 SCR 82)* and in subsequent decision given in *Sukhdev Singh* v. *Bhagatram Sardar Singh Raghuvansh (1975) 3 SCR 619).* Mathew, J. quoted the above-referred observation of Mr Justice Frankfurter with approval.

In view of the pronouncement of this Court on the point it must be held to be obligatory on the part of Respondent 1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Respondent 1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-law 2"

While we find considerable force in this submission based on the 'Vitarelli' doctrine, and that the respondents must be required to comply with their own guidelines, we are afraid that the writ petition is to be dismissed for other reasons.

The guidelines, enunciated in the warning instructions in circular dated 17.9.2004 in para 5, give benefit of protection to persons elected for the first time and require the unions to ensure that the names of personnel who are due for tenure posting during 2005 are not nominated/elected for the said posts and if a person due for tenure posting is elected as works committee/important office bearer, no protection would given to such a person. Learned Assistant Solicitor General would refer to the proceedings dated 23.2.1993 relating to transfer of government servants who are office bearers of recognized unions/associations, para 3 of which reads as under:

"Ministry of Defence OM No.13(4)60/5701/D (Appts) Dt. 18.11.60 stipulated the number of important office bearers of recognized unions/associations claiming protection from transfer. The protection from transfer will be restricted to maximum five important office bearers viz., one president, one vice president, one treasurer and one secretary (which includes General Secretary and Joint Secretary). For this purpose each recognized union/association shall forward the names of their five bearers whom they consider as important office bearers and for whom protection from transfer is required during that particular year immediately on conclusion of their annual general body election to the administrative authority as well as to their controlling branches and AG's Branch at Army Head quarters. On receipt of the names, the administrative authority will intimate the same to the respective Record Offices with clear instructions that these important office bearers

may not be transferred before completion of their tenure as office bearers. In case fresh elections are not held for any reasons, what so ever the protection from transfer to the office bearers concerned will cease on expiry of one year from the date of last election"

It is clear therefrom that protection from transfer is restricted to five important office bearers i.e., one president, one vice president, one treasurer and one secretary (which includes the general secretary and the joint secretary) and for this purpose each recognized union is required to forward the names of their five office bearers whom they consider as important office bearers and for whom protection from transfer is required during that particular year. Admittedly, in the present case, the MES Employees Union has not forwarded the name of the petitioner as one of its important office bearers. Further, the General Secretary of the MES union, in his letter dated 30.8.2005, informed the Chief Engineer (Southern Command) that they were not aware of the circular dated 17.9.2004 and that the appeal for protection from posting in respect of the petitioner could be decided as per the rules and regulations in vogue and that the petitioner was advised to implement the move as per the existing rules. Not only has the MES union not forwarded the name of the petitioner as one of its important office bearers requiring protection, but on the other hand, has informed the respondent of their lack of awareness of the circular dated 17.9.2004, that the petitioner's case should be considered as per rules and regulations and that the petitioner was advised to implement the transfer as per existing rules.

It is well settled that transfer is an incident of service and no employee has right to remain permanently at a particular station. If any individual has a grievance regarding his transfer, he can, at best, make a representation to the competent authority and it is for the competent authority to consider and take an appropriate decision in this regard. In the present case, the representations submitted by the petitioner have been rejected by the 2nd respondent.

In any event, the jurisdiction of this court under Article 226 of the Constitution of India is discretionary and since the challenge in this writ petition is against the order of the Tribunal refusing to interfere with the orders of the Government and inasmuch as transfer is an incident of service, which an employee is required, normally, to adhere to, we see no reason to exercise our discretion and interfere with

the order of the Tribunal.

The writ petition is accordingly dismissed. There shall however be no order as to costs.

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Chelameswar, J

Dt. . .2005

_____ **Ramesh Ranganathan, J**